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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,219

09/29/2003

James E. Baack

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GARDERE/EDS

GARDERE WYNNE SEWELL INTELLECTUAL PROPERTY

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EXAMINER

RIAD, AMINE

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/674,219	BAACK, JAMES E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Amine Riad	2113	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Detailed Action**

Claims 1-21 have been presented for examination.

Claims 1-21 have been rejected.

### **Objections**

Claims 9, and 15 recite:

The computer program product as recited in claim 8, further comprising:  
Fifth instructions for remirroring the root device such the root device and the back off device are substantially identical if the upgrading the root partition of the data processing system was successful. Examiner suggests omitting the article the.  
Examiner also brings to the attention of the Applicant that document number 2003-039148 included in the 1449 form is incorrect, the correct number is 20030039148. Examiner respectfully requests a correction for the record.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Aija U.S Patent 6,928,579

In regard to claims 1, 8, 15

Aija discloses a method for updating software on a data processing system having

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a root device (Column 2; line 7) and a back-off (Column 2; line 8) device which is a mirror of the root device,

the method comprising:

- executing a preparation function on the data processing system; (Figure 4; Step S 20 "In step S 20, an indication is made in the non volatile memory of the client device 100 that the upgrade procedure has started)
- responsive to a determination that the preparation function completed successfully, breaking a root mirroring function of the data processing system such that changes to the root device do not affect the back-off device; (Column 5; lines 1-7 "This indication allows the client device 100 to determine whether the upgrade was interrupted before being finished. Then the current system partition is copied onto the backup system partition. The new software package is then installed on the backup system partition" [Examiner considers the moment the software gets installed in the back up partition, it is separated from the rest of the system in a way that changes affecting the current partition will not affect the back up partition])
- upgrading the root device of the data processing system; (Figure 5) and (Column 5; line 31)

- and responsive to a determination that the upgrading the root device of the data processing system was unsuccessful, recovering an original state of the root device using the back-off device (Column 5; lines 51-53) and (Figure 6)

In regard to claims 2, 9, 16

Aija discloses the method as recited in claim 1, further comprising: responsive to a determination that the upgrading the root partition of the data processing system was successful, remirroring the root device such that the root device and the back-off device are substantially identical.(Column 5; lines 7-9 “The new software is then installed on the back up partition” [this means that the current and the back up partition are the same])

In regard to claims 3, 10, 17

Aija discloses the method as recited in claim 1, further comprising: prior to upgrading the root device, determining whether the data processing system can boot from the back-off device; (Column 5; lines 61-63)[Examiner considers that since the client devices boots from the backup the system inherently determined that it can boot from it]

and responsive to a determination that the data processing system cannot boot from the back-off device, determining a reason for the inability of the data processing system to boot from the back-off device.(Column 2; lines 8-12 “The dual system partitions are used to perform a recovery procedure in which the software system returns to a previous version in response to a startup (boot) failure, a runtime failure (failure that

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causes the program to hang or a user request)") [Aija discloses a dual system, Examiner understands that the response can be either for the current partition, or for the back up partition]

In regard to claims 4, 11, 18

Aija discloses the method as recited in claim 1, wherein the preparation function comprises:

presenting a user with at least one configuration question; and storing a response to the at least one configuration question as configuration data. (Column 2; lines 12 [The recovery procedure is initiated by a user request. Examiner considers that in order to have a user request served, some kind of a prompt under the form question answer has to accomplished between the user and the system ])

In regard to claims 5, 12, 19

Aija discloses the method as recited in claim 1, wherein remirroring the root device such that the root device and the back-off device are substantially identical comprises: and rebooting the data processing system using the back-off device (Column 6; line 67 "The boot indicator 24 of the non volatile memory 26 is then updated o indicate the backup system partition is now the new current system partition")

setting a volume manager to use plexes on the back-off device as source plexes of volumes; (Column 6;line 4 "the switching of the boot indicator may be performed before rebooting")

In regard to claims 6, 13, 20

Aija The method as recited in claim 5, further comprising: overlaying data in the managed file systems on the root device using data from the back-off device (Column 6; lines 5-7 "A new backup system partition is then created by copying the previously current system partition " [Examiner considers the creation of a new backup system partition as overlaying the previous backup partition])

In regard to claims 7, 14, 21

Aija discloses the method as recited in claim 1, wherein the data processing system is a server. (Figure 1; item 100 [Examiner considers a client as a server])

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,393,585 covers saving a second operating system, but does not cover a second device such as a partition. U.S Patent Application Publication mirrors data, but recovers with the current state of the data plus all the updates. See PTO 892.


### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amine Riad whose telephone number is 571-272-8185. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Amine Riad**  
**Patent Examiner**  
**10/19/2006**

  
ROBERT BEAUSOLIEL  
SUPERVISOR/PATENT EXAMINER  
TECHNOLOGY CENTER